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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/915,873	07/26/2001	Anne-Marie Stomp	40989/237225(9280-12)	8799

826 7590 01/05/2004

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EXAMINER

HELMER, GEORGIA L

ART UNIT	PAPER NUMBER
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1638

DATE MAILED: 01/05/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/915,873

Applicant(s)

STOMP ET AL.

Examiner

Georgia L. Helmer

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 05 May 2003.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-13, 20-22, and 24-34 is/are pending in the application.
- 4a) Of the above claim(s) 27-34 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-13, 20-22 and 24-26 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 31 July 2000 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. §§ 119 and 120

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 13) ☒ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application) since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.
a) ☐ The translation of the foreign language provisional application has been received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121 since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____
- 4) ☐ Interview Summary (PTO-413) Paper No(s). _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____

DETAILED ACTION

Status of the Claims

1. The Office acknowledges receipt of Applicants Response; dated 5 May 2003.
2. Applicant has withdrawn claims 27-34, cancelled claims 14-19 and 23, and amended claims 1-3, 8, 9, 20-22 and 24. Claims 1-13, 20-22 and 24-34 are pending and claims 1-13, 20-22 and 24-34 are examined in the instant action.
3. This application contains claims 27-34 drawn to an invention nonelected with traverse. A complete reply to the final rejection must include cancellation of nonelected claims or other appropriate action (37 CFR 1.144) See MPEP § 821.01.
4. This action is made FINAL necessitated by Applicant's amendment.
5. All rejections not addressed below have been withdrawn.
6. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.
7. The specification has been amended to remove an embedded hyperlink and/or other form of browser-executable code.

Claim Rejections - 35 USC § 112-second

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8. Claims 1-13, 20-22, and 24-26 remain rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. This rejection is in part

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repeated for the reasons of record set forth in the Office Action mailed 24 January 2003.

To the extent that this is a new rejection, it is necessitated by Applicant's amendment.

Applicant arguments filed 5 May 2003 have been considered but are not deemed persuasive.

In claim 1 (b), "biologically active polypeptide" lacks antecedent basis.

Suggested language is "biologically active alpha-2b-interferon".

In Claims 3, (c) and 9, "plant-preferred translation initiation context nucleotide sequence" is unclear. What does this mean? Where is this placed with respect to the other components of the nucleic acid construct? Applicant traverses, stating primarily that the specification (p. 7, lines 8-11) gives a description of "plant-preferred translation initiation context nucleotide sequence", (Response, p. 12).

Applicant's traversal has been considered and is unpersuasive. The cited portion of the specification merely provides an example, but does not provide an explicit definition of the phrase. It is suggested that Applicant amend these claims to recite the limitations of claims 6 and 12, respectively.

In claim 8, "alpha-interferon" lacks antecedent basis.

Remarks

9. SEQ ID Nos 1, 3, 4, and 5 are taught in the prior art.
10. No claim is allowed.
11. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

12. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Georgia L. Helmer whose telephone number is 703-308-7023. ~~Note that Examiner's phone number will change to 571-272-0796 as of 6-January 2004.~~ The examiner can normally be reached on 8:30 - 5:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Amy Nelson can be reached on 703-306-3218. The fax phone numbers for

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the organization where this application or proceeding is assigned are 703-308-4242 for regular communications and 703-308-4242 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-0196.

Georgia Helmer PhD
Patent Examiner
Art Group 1638
December 29, 2003

A handwritten signature in black ink, appearing to read "Amy Nelson", with a stylized flourish at the end.

AMY J. NELSON, PH.D
SUPERVISORY PATENT EXAMINER
TECHNOLOGY CENTER 1600